



Signed and Filed: January 17, 2019

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
) No. 18-30530-DM
DANIEL EVERETT OBLÉNIS, aka)
DANNY OB, aka DANNY O, aka) Chapter 13
DANNY E, aka DANIEL DANIEL)
DANIEL,)
)
Debtor.)

MEMORANDUM DECISION REGARDING DEBTOR'S OBJECTIONS TO AND
REQUESTS FOR RECONSIDERATION OF SANCTIONS ORDER

For the reasons set forth below, the court will enter an order overruling the various objections filed by Debtor to this court's Order Granting Creditor The State Bar of California's Motion for Sanctions Against Debtor Daniel Everett Oblenis entered on October 26, 2018 at Docket No. 39. To the extent these objections constitute motions to vacate or for reconsideration, such relief will be denied.

I. THE 2017 DISMISSAL ORDER

In 2017, Debtor filed his fifth bankruptcy case in this district (Case No. 17-30225). Chapter 13 trustee David Burchard ("Trustee") filed a motion to dismiss that case with a two-year bar to future filings and to assess sanctions in the event of the filing of a case by Debtor in that two-year period. (Dkt. 21 in 17-

1 30225).^{1/} The Trustee disclosed that Debtor had also filed multiple
2 cases in the Bankruptcy Court for the Western District of
3 Washington, which in turn imposed a two-year bar against his filing
4 of further bankruptcy petitions. (Dkt. 21 in 17-30225 at 4:5-7).
5 At least one of the Northern District of California bankruptcy
6 cases (Case No. 15-52214) was filed in violation of the Washington
7 bankruptcy court's order.

8 Trustee's motion sought the following relief:

9 This pattern of filing bankruptcy to forestall the
10 creditors must be stopped. The Trustee requests this case
11 be dismissed with prejudice and that an Order be issued
12 that: 1) bars Debtor from future filings for a minimum of
13 two years; 2) any case filed after entry of the order be
deemed null void and dismissed without notice to Debtor;
and 3) if Debtor violates this order, sanctions in the
amount of \$5,000.00 will be assessed within ten days of
the filing of the petition.

14 Dkt. 21 in 17-30225.

15 Debtor was aware that Trustee had filed a request for a two-
16 year bar on re-filing, having filed an "Opposition to Request to
17 Dismiss Filing with a Bar for Filing of Two Years" (Dkt. 25 in 17-
18 30225) and a "Further Opposition to Request to Dismiss Filing With
19 a Bar for Filing of Two Years" (Dkt. 26 in 17-30225).

20 On July 19, 2017, the court held a hearing on the motion as
21 described in the minutes:

22
23 Hearing Held. The matter stands submitted. The court will
24 consider any filings made by the debtor prior to making a
25 decision as long as the pleadings are signed by the
debtor and filed with the bankruptcy court. (related

26 ^{1/}The four prior cases identified by Trustee include Case No.
27 15-52214 (dismissed for failure to comply with Court's Order to
28 File Required Documents; Case No. 14-43328 (dismissed for the same
reason); Case No. 13-3211 (dismissed for failure to pay filing
fee) and 13-31855 (dismissed for failure to comply with Court's
Order to File Required Documents).

1 document(s): 21 Motion to Dismiss Case filed by David
2 Burchard) (lp) (Entered: 07/20/2017)

3 In the week following the hearing, Debtor filed seven
4 documents including another opposition. After considering these
5 additional filings, the court entered its order granting the motion
6 to dismiss and barring Debtor from filing any bankruptcy cases in
7 any bankruptcy court of the United States for two years ("2017
8 Dismissal Order"). Dkt. 41 in 17-30225. The court stated that
9 Debtor's "non-response to the substantive allegations of
10 the Motion (joined by Mr. Boschetti) cannot be ignored. *In fact,*
11 *the undisputed facts regarding multiple filings and lack of*
12 *prosecution leads the court to conclude that this case should be*
13 *dismissed and [Debtor] should be barred once again from filing*
14 *for two years as requested by the Trustee."* Dkt. 41 in 17-30225 at
15 2:20-25 (emphasis added). The court cautioned Debtor that a
16 violation of the order could result in imposition of sanctions of
17 \$5,000.00 as requested by the Trustee. Dkt. 41.

18 Notice of the 2007 Dismissal Order was served on Debtor,^{2/} an
19 attorney who knew the nature of the relief that had been sought,
20 including the two-year bar, as reflected by the title and substance
21 of his oppositions. Even though Debtor was placed on the court
22 service list at the end of the 2007 Dismissal Order, the order
23 itself was not served on him.

24 II. THE 2018 CASE

25 Debtor filed the above-captioned case on May 11, 2018. He
26 also filed a request to pay the filing fee in installments (Dkt. 2)

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28 ^{2/}See Certificate of Service filed on July 20, 2007, at Dkt.
42.

1 and for a waiver of pre-petition counseling requirement (Dkt. 8)
2 (the "Requests"). Three days later, on May 14, 2018, the court
3 entered an Order on Requests and re Possible Dismissal (Dkt. 10),
4 which it amended on May 22, 2018 (Dkt. 18). These orders noted
5 multiple deficiencies in the Requests and the bankruptcy petition,
6 including Debtor's failure to provide a social security number and
7 to identify his prior cases. In the final two paragraphs of the
8 initial and amended order, the court specifically (1) observed that
9 Debtor's current bankruptcy filing appeared to violate the two-year
10 bar imposed by the 2017 Dismissal Order and (2) reserved
11 jurisdiction to decide any motion for sanctions filed by a party-
12 in-interest due to Debtor's violation of that bar. (Dkt. 10 and
13 Dkt. 18).^{3/}

14 Despite the court's warning that the filing of the current
15 case violated the 2017 Dismissal Order, Debtor filed a response
16 (Dkt. 21) to the Amended Order on Requests and Possible Dismissal
17 (Dkt. 18). In it, Debtor asserted that he had filed this case as
18 his corporation (which is ineligible for chapter 13 relief) even
19 though he filed a Voluntary Petition for Individuals Filing for
20 Bankruptcy (Official Form 101) and identified only himself
21 individually as the debtor (Dkt. 1). He further disputed the
22 relevance of his social security number, and provided the numbers
23 of only three of his multiple prior cases; he further noted that he
24 was "not sure how that is relevant to this filing." Dkt. 21, p. 2.
25 Debtor did not complain that he had not been served with the 2017
26 Dismissal Order.

27
28 ^{3/}The record reflects that these orders were served on Debtor
(Dkt. 14, Dkt. 19, and Dkt. 20).

1 After consideration of this response by Debtor, the court
2 issued its Order Dismissing Case on May 30, 2018 (Dkt. 22). The
3 last paragraph of that order states: "*Notwithstanding dismissal,*
4 *the court retains jurisdiction to consider any motion a party in*
5 *interest may file for sanctions as a result of debtor's filing this*
6 *case in violation of [the 2017 Dismissal Order]."* (Emphasis added).
7 The case was closed on August 20, 2018.

8 On August 21, 2018, one day after the case was closed, the
9 State Bar of California filed a motion for sanctions (the
10 "Sanctions Motion") against Debtor based on his failure to comply
11 with the 2017 Dismissal Order and set it for hearing on September
12 18, 2017. Debtor did not respond (thus waiving any objection that
13 the 2017 Dismissal Order had not been served on him), so the court
14 entered a docket text order on September 17, 2018, taking the
15 matter off calendar and indicating that it would issue a written
16 order granting Sanctions Motion in part. The next day (September
17 18, 2018), Debtor filed a "Notice of Related Case and Motion
18 Partial Response To Motion For Sanctions; Request For Disability
19 Accommodation Based on Previously submitted Documents Via Email;
20 Request for Notice That An Appeal Had Been Previously Filed in This
21 Matter; Request For Recognition That the Service Here Was Not in
22 Accord with Rule of Bankruptcy Procedure 7004" (the "Sanctions
23 Opposition") (Dkt. 35).

24 On October 23, 2018, after considering the merits of Debtor's
25 Sanctions Opposition, the court entered a memorandum decision (Dkt.
26 36) stating that it would grant the State Bar's Sanctions Order.
27 The court found that in light of "Debtor's failure to disclose
28 pertinent information in his petition or in an amended petition

1 that would automatically link this case to his prior cases (social
2 security number, prior case numbers) and his use of a different
3 last name," the Debtor "knowingly violated the terms of the [2017
4 Dismissal Order] with an intent to avoid the consequences of such a
5 violation." Dkt. 36 at 4:3-9.

6 For the reasons set forth in that memorandum decision, the
7 court entered the Order Granting Creditor The State Bar of
8 California's Motion for Sanctions Against Debtor Daniel Everett
9 Oblenis (Dkt. 39). Debtor thereafter filed a flurry of oppositions
10 to the order as well as a motion for the disqualification of this
11 judge. Dkts. 42, 43, 45, 46, 47, 51, 52, and 60. The court will
12 treat the objections to the order collectively as a Motion to
13 Vacate the Sanctions Order.

14 By an order entered on November 26, 2018, the court denied the
15 various motions for recusal. Dkt. 55. On December 11, 2018, the
16 State Bar filed its response to the various oppositions, requests,
17 and motions filed by Debtor with respect to the Sanctions Order.
18 In it, the State Bar correctly noted that the record does not
19 support Debtor's position that the petition commencing this case
20 was an "amendment" to an existing petition.

21 Given that Debtor knew the nature of the relief sought by
22 Trustee in the motion to dismiss with a two-year bar in Case No.
23 17-30225 (as reflected in his responses referring to the requested
24 two-year bar), the court concludes that he received notice that the
25 court had granted such relief. As noted, he did receive notice of
26 entry of the 2017 Dismissal Order as reflected at Dkt. 42 in 17-
27 30225. His silence after that amounts to a waiver of actual
28 service of the actual 2017 Dismissal Order.

1 Moreover, the information provided on the petition date
2 (including the use of a different last name and the absence of a
3 social security number)^{4/} precluded court staff from identifying and
4 placing on the docket his five prior cases in this district.
5 Debtor's actions establish conclusively that Debtor knew about the
6 two-year bar and hoped to circumvent it.

7 III. CONCLUSION

8 Even though Debtor was not served with the 2017 Dismissal
9 Order itself, he received notice of entry of that order and knew
10 the substance of the relief sought by the Trustee in the underlying
11 motion, i.e., imposition of two-year bar to filing any bankruptcy
12 petition and sanctions in the amount of \$5,000 if Debtor violated
13 the order and waived any objections to service of that order.
14 Contrary to his assertions, the State Bar served him with
15 sufficient notice of its motion, notice and supporting papers (Dkt.
16 28 at ECF p. 7; Dkt. 28-1 at ECF p. 5; Dkt. 28-2 at ECF p. 5 ; and
17 Dkt. 29, ECF p. 3). Debtor received 28 days notice of the motion
18 in accordance with B.L.R. 9014-1(b), and the manner of service
19 complied with Fed. R. Bankr. P. 7004(b)(9).

20 Based on the foregoing, the court will enter an order
21 overruling Debtor's objections to the Sanctions Order and denying
22 his requests for reconsideration, which are filed at Docket Numbers
23 60, 52, and 42 (addressed in this court's Order on Objection to the
24 Memorandum of Decision and Order Granting State Bar Motion for
25 Sanctions at Dkt. 44).

26 *** END OF MEMORANDUM DECISION ***

28 ^{4/}On the form for the provision of the social security number,
Debtor wrote "Do not have with me."

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